

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 10 of 1996

in

SPECIAL CIVIL APPLICATION No 5827 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and  
MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?

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DPEO

Versus

REKHABEN N JOSHI

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Appearance:

MR RA MISHRA for Appellants

MR AM RAVAL for Respondent No. 1

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CORAM : MR.JUSTICE C.K.THAKKER and  
MR.JUSTICE A.L.DAVE

Date of decision: 18/12/98

ORAL JUDGEMENT

Admitted. Mr.A.M.Raval appears and waives

service of notice of admission. With the consent of both the counsel of the parties and in the facts and circumstances of the case, the matter is taken up to day for final hearing.

This appeal is directed against the judgment and order passed by the learned Single Judge, in Special Civil Application No. 5827 of 1994 dt. October 5, 1995. By the said order the learned Single Judge has issued direction, operative part of which reads as under:

" In view of the aforesaid resolution and other resolutions placed on record the petitioner has made out a case for preferential appointment to the Government job to which she would be entitled as per her qualifications. Under the circumstances following directions are issued:

The respondents shall consider the petitioner's case for appropriate post, preferably the post of Primary Teacher, immediately as and when the post, for which the petitioner can be suitably considered, is vacant and available with the respondents. The respondents shall inform the petitioner about such consideration."

Mr.Mishara, learned counsel for the appellant contended that the learned Single Judge has committed an error of law in relying upon the Government resolution at Annexure.E for the purpose of issuing directions to the authorities. He submitted that in exercise of the powers conferred by Sec.323 of the Gujarat Panchayats Act, 1961, rules have been framed known as "Gujarat Panchayat Service (Selection of Primary Teachers) Rules, 1970 (hereinafter referred to as "the Rules"). He, therefore, submitted that the appointment of primary teacher can be made only in consonance with the above statutory rules. According to the learned counsel, therefore, direction issued by the learned Single Judge to consider the case of the petitioner on the basis of the Government resolution at Annexure.E cannot be said to be in accordance with law in the light of statutory provisions in the above Rules.

Mr.A.M.Raval, learned counsel for the respondent on the other hand, supported the order passed by the learned Single Judge. He submitted that no affidavit was filed at the time of hearing of the petition. He also stated that a statement was made on behalf of the present appellant that as and when vacancy will arise, the case

of the petitioner would be considered. For that our attention was invited to para 3 of the judgment of the learned Single Judge, in which it was observed as under:

"He, however, hastens to add that as and when vacancy arises the petitioner's case might be considered."

Mr.Raval, further submitted that the attention of the court was not invited to the rules and no argument was advanced before the learned Single Judge. The court may not permit a new contention to be taken at the Letters Patent Appeal stage.

In our opinion, direction issued by the learned single Judge must be modified in the light of the statutory rules of 1970. It is well settled that the Government Resolutions / Circulars / norms can be given effect to but if they are contrary to, or inconsistent with statutory rules, they will have to give way as they cannot override statutory rules. Even if no reliance was placed on the rules and any concession was made by a party such a concession cannot come in the way of the party concerned in view of the nature of the rules if they are otherwise.

For the foregoing reasons, in our opinion, the Letters Patent Appeal deserves to be partly allowed and is accordingly allowed to the extent by clarifying that the direction issued by the learned Single Judge must be complied with in the light of the provisions of "Gujarat Panchayat Service (Selection of Primary Teachers) Rules, 1970. The appeal is accordingly allowed to the above extent with no order as to costs.

If the case of the respondent-original petitioner is not considered by now, it will be considered in accordance with law and on the basis of the above observations as expeditiously as possible.

Dt.18.12.1998. (C.K.THAKKER J.)

(A.L.DAVE J.)